

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 3-7 are pending in the present application, Claims 3-7 having been amended, and Claims 1-2 having been previously canceled without prejudice or disclaimer. Support for the amendments to Claims 3-7 is found in the originally filed specification. Applicants respectfully submit that no new matter is added.

In the outstanding Office Action, Claims 1-2 were provisionally rejected under non-statutory obviousness-type double patenting as unpatentable over Claims 1 and 2 of copending Application Serial No. 10/175,402; Claims 1-7 were rejected under non-statutory obviousness-type double patenting as unpatentable over Claims 1-4 of U.S. Patent No. 6,668,135 in view of Taira et al. (EP 0737980); Claims 1-7 were rejected under non-statutory obviousness-type double patenting as unpatentable over Claims 1, 4, and 7-8 of U.S. Patent No. 6,560,407 in view of Taira et al. (EP 0737980); Claims 1-7 were rejected under non-statutory obviousness-type double patenting as unpatentable over Claims 1 and 3-5 of U.S. Patent No. 6,385,389 in view of Taira et al. (EP 0737980); Claims 1-7 were rejected under non-statutory obviousness-type double patenting as unpatentable over Claims 1, 2, 4, and 6 of U.S. Patent No. 6,674,959 in view of Taira et al. (EP 0737980); Claims 1-7 were rejected under non-statutory obviousness-type double patenting as unpatentable over Claims 1-4 of U.S. Patent No. 6,671,458 in view of Taira et al. (EP 0737980); Claim 7 was rejected under non-statutory obviousness-type double patenting as unpatentable over Claim 1 of U.S. Patent No. 6,532,336 in view of Taira et al. (EP 0737980); and Claim 7 was rejected under 35 U.S.C. §101 as directed toward non-statutory subject matter.

With respect to the provisional double patenting rejection directed toward Claims 1 and 2, Applicants note that Claims 1 and 2 were canceled in the Preliminary Amendment

filed March 18, 2004. Thus, Applicants respectfully submit that the provisional double patenting rejection is moot.

With respect to the rejections based on non-statutory double patenting, a suitable terminal disclaimer is filed herewith in order to expedite progress toward allowance. Thus, Applicant's respectfully submit that the outstanding rejections of the claims have been overcome.

The filing of a Terminal Disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. The "filing of a Terminal Disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 U.S.P.Q.2d 1392 (Fed. Cir. 1991). Accordingly, Applicants filing of the attached disclaimer is provided for facilitating a timely resolution to prosecution only, and should not be interpreted as an admission as to the merits of the obviated rejection.

As for the rejection of Claim 7 under 35 U.S.C. § 101, that rejection is respectfully traversed. Claim 7 has been amended to recite that the management information is provided to control recording, playing back, or editing the A/V file by the information recording/reproducing apparatus, the A/V file is accessed according to the management information. Accordingly, it is respectfully requested that this rejection be withdrawn.

MPEP § 2106 discusses statutory subject matter in relation to data structures of a computer readable medium. Particularly, MPEP § 2106 provides,

a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Thus, based on the clear language of this section, Claim 7 is statutory as it defines a functionality of which is realized based on the interrelationship of the structure to the medium and recited hardware components.

Further, should the Examiner disagree with the above passage, MPEP § 2106 also states that,

Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

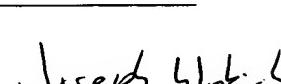
Applicants respectfully submit, as noted above, that the rejection under 35 U.S.C. § 101 should be withdrawn. However, if the rejection under U.S.C. § 101 is to be maintained, applicants respectfully request that the Examiner provide an explanation of the rejection in view of the guidelines of MPEP § 2106.

Respectfully submitted,

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